

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) M0215.0001/P001	
		Application Number 10/772,014-Conf. #4081	Filed February 4, 2004
		First Named Inventor Karl Manser	
		Art Unit 3764	Examiner S. R. Crow
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>41,135</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> </div> <div style="width: 35%; text-align: center;"> <p>_____ /Richard LaCava/ Signature</p> <p>_____ Richard LaCava Typed or printed name</p> <p>_____ (212) 277-6659 Telephone number</p> <p>_____ February 27, 2008 Date</p> </div> </div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<input type="checkbox"/> *Total of <u>1</u> forms are submitted.			
I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4). Dated: <u>February 27, 2008</u> Electronic Signature for Richard LaCava: <u>/Richard LaCava/</u>			

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Dated: February 27, 2008

Electronic Signature for Richard LaCava: /Richard LaCava/

Docket No.: M0215.0001/P001
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Karl Manser

Application No.: 10/772,014

Confirmation No.: 4081

Filed: February 4, 2004

Art Unit: 3764

For: A STRUCTURE AND METHOD FOR
INCREASING PROPRIOCEPTIVE DEMANDS
ON FOOT, ANKLE AND LOWER LEG

Examiner: S. R. Crow

BRIEF IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant respectfully requests a review of the legal and factual bases for the rejections in the above-identified patent application. Pursuant to the guidelines set forth in the Official Gazette Notice of July 12, 2005, for the Pre-Appeal Brief Conference Program, favorable reconsideration of the subject application is respectfully requested in view of the following remarks.

Claims 9-13 are pending in the present application and have been twice rejected, most recently in a Final Office Action mailed September 26, 2007¹. A copy of these claims are annexed to this brief for the reviewer's convenience. In particular, Claims 9, 10 and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,925,183 to Kim in view of U.S. Patent No. 5,066,000 to Dolan and U.S. Patent No. 6,210,349 to Naruse et al.

¹ Claims 1-8 and 14-18, although still pending, have been restricted and withdrawn from consideration and are not the subject of this Pre-Appeal Request for Review.

Claims 11 and 13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kim in view of Dolan and Naruse et al., and further in view of U.S. Patent No. 6,029,962 to Shorten et al. Applicant respectfully submits that rejection of these claims is improper for the reasons set forth in detail below.

Among the limitations of independent claim 9 which are neither disclosed nor suggested in the prior art of record is a belt kit for a treadmill comprising “at least **two separate belts** dimensioned for use on the treadmill,” “a first belt of the at least two separate belts having a first continuous, consistent surface,” “a second belt of the at least two separate belts having a second continuous, consistent surface,” wherein “the first belt and the second belt are **dimensioned for direct foot contact**,” and “the first belt is dimensioned to impart proprioceptive demands on the foot, ankle and lower leg different from those of the second belt.” The use of such separate belts that impart different proprioceptive demands on the foot, ankle and lower leg, is advantageous in aiding persons during physical therapy, for example.

Neither Kim, Dolan, Naruse et al. or Shorten et al., teach or suggest such a belt kit for a treadmill. Specifically, Kim is directed to an indoor bicycle that simulates a road surface and requires the user to balance the bicycle during use. See Col. 1, lines 51-64 of Kim. There is simply no disclosure whatsoever in Kim of providing multiple belts with different surfaces.

In addition, there is no teaching or reasoning for modifying the device of Kim to provide at least two separate belts that are dimensioned for direct foot contact and to impart different proprioceptive demands on the foot, ankle and lower leg. Although Kim discloses that the treadmill surface is provided with irregularities to simulate a road surface, these irregularities are not designed to impart proprioceptive demands on the foot, ankle and lower leg, as required by independent claim 9.

Kim simply does not provide any reason why one would remove the bicycle and use the treadmill standing alone, let alone use such a treadmill for altering the proprioceptive demands on the foot, ankle and lower leg. The device of Kim is just not designed for this purpose.

Dolan does not remedy any of the deficiencies of Kim. Dolan is directed to a portable multi-surface track. In the system of Dolan, a plurality of track sections, each with a different surface type, are assembled to form a single track that has different sections. Once assembled, the patient is guided along the track, uninterruptedly from different surface to different surface, to practice their walking and balance skills. See Dolan at Col. 2, lines 40-45.

It is respectfully submitted that one of skill in the art would have no reason to combine the teachings of Kim and Dolan. As stated above, Kim is directed to an indoor bicycle that simulates a road surface and requires the user to balance the bicycle during use. One of skill in the art would have no reason to alter the treadmill surface of Kim to incorporate the different, ever changing surfaces of Dolan. To do so would impede the purpose of Kim, which is to which is to provide a single, simple simulated road surface over which a user balances a bicycle during use.

However, assuming *arguendo* that there was a reason to combine the teachings of Kim and Dolan, one would not arrive at the present invention as defined in independent claim 9. At best, one would arrive at a treadmill for a bicycle that has a **single** belt with different consecutive surface types, and not at least two separate belts that are dimensioned for direct foot contact and impart different proprioceptive demands on the foot, ankle and lower leg.

Naruse et al. does not remedy any of the deficiencies of Kim and/or Dolan. Naruse et al. is directed to a foot massager with interchangeable pads. These interchangeable pads are not dimensioned to impart proprioceptive demands on the foot, ankle and lower leg, as required by independent claim 9. These interchangeable pads are simply designed to massage the soles of a

person's feet. As such, one would have no reason to combine the teachings of Naruse et al. with those of Kim and/or Dolan.

Shorten et al. does not remedy any of the deficiencies of Kim, Dolan and/or Naruse et al.. Shorten et al. does not teach or suggest at least two separate belts each having a continuous, consistent surface, that are dimensioned for direct foot contact and that impart different proprioceptive demands on the foot, ankle and lower leg, as required by independent claim 9. As such, even if one were to combine the teachings of Kim, Dolan, Naruse et al. and/or Shorten et al., one would not arrive at the present invention as defined in independent claim 9.

Accordingly, it is respectfully submitted that independent claim 9 patentably distinguishes over the prior art of record for at least the above reasons.

Claims 10-13 depend directly from independent claim 9 and include all of the limitations found therein. Each of these dependent claims include additional limitations which, in combination with the limitations of the claims from which they depend, are neither disclosed nor suggested in the art of record. Accordingly, claims 10-13 are likewise patentable.

In view of the foregoing, Applicant respectfully submits that the pending claims are patentable over the cited references. Further Applicant respectfully requests that the pending rejections be withdrawn and a Notice of Allowance issued.

In the event a fee is required or if any additional fee during the prosecution of this application is not paid, the Patent Office is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 50-2215.

If this communication is filed after the shortened statutory time period had elapsed and no separate Petition is enclosed, the Commissioner of Patents and Trademarks is petitioned, under 37 CFR 1.136(a), to extend the time for filing a response to the outstanding Office Action

by the number of months which will avoid abandonment under 37 CFR 1.135. The fee under 37 CFR 1.17 should be charged to our Deposit Account No. 50-2215.

Dated: February 27, 2008

Respectfully submitted,

Electronic signature: /Richard LaCava/
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